

APPEAL NO. 180080  
FILED MARCH 8, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 13, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by determining that: (1) the compensable injury of (date of injury), does not extend to an L4-5 disc bulge, an L5-S1 disc bulge, lumbar radiculopathy, aggravation of degenerative disc disease, or chronic pain syndrome; (2) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on February 20, 2017; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant had disability beginning on November 5, 2016, and continuing through the date of the CCH. The appellant/cross-respondent (self-insured) appealed, noting an inconsistency in the ALJ's decision regarding disability. The claimant cross-appealed the ALJ's extent of injury, MMI, and IR determinations. The appeal file does not contain a response from the claimant to the self-insured's appeal.

**DECISION**

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the compensable injury of (date of injury), extends to at least a cervical sprain/strain, a thoracic sprain/strain, a lumbar sprain/strain, right hip trochanteric bursitis, and a right forearm strain. The claimant testified she was injured when she fell at work.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

**EXTENT OF INJURY**

The ALJ's determination that the compensable injury of (date of injury), does not extend to an L4-5 disc bulge, an L5-S1 disc bulge, lumbar radiculopathy, aggravation of degenerative disc disease, or chronic pain syndrome is supported by sufficient evidence and is affirmed.

## **MMI**

The ALJ's determination that the claimant reached MMI on February 20, 2017, is supported by sufficient evidence and is affirmed.

## **IR**

The ALJ's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

## **DISABILITY**

Disability means the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that he or she had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the ALJ. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of his or her disability; only that it was a producing cause. APD 042097, *supra*.

The decision states in Finding of Fact No. 7, that from November 5, 2016, through the date of the CCH the claimant was unable to obtain and retain employment at wages equivalent to her pre-injury wage as a result of the compensable injury. Conclusion of Law No. 6, the Decision, and the summary paragraph on the first page of the decision all state that the claimant had disability beginning on November 5, 2016, and continuing through the date of the CCH. However, the ALJ stated the following in the Discussion:

. . . [Dr. Q], the designated doctor appointed to address the issue of disability, provided a Work Status Report (DWC-73) that indicated [the] [c]laimant had work restrictions beginning on November 4, 2016, and continued through February 19, 2017. [Dr. Q] indicated that [the] [c]laimant could return to work without restrictions beginning on February 20, 2017. However, based upon the evidence presented, the compensable injury is found to be a cause of [the] [c]laimant's inability to earn her preinjury wages from November 5, 2016, through the date of the [CCH].

Based upon the evidence presented, it is found that [the] [c]laimant had disability beginning on November 5, 2016, and continuing through

February 19, 2017, and did not have disability beginning on February 20, 2017, and continuing through the date of the [CCH].

The evidence reflects that Dr. Q did opine the claimant could return to work without restrictions beginning on February 20, 2017. The ALJ's decision is inconsistent with her discussion regarding the claimant's period of disability. Accordingly, we reverse the ALJ's determination that the claimant had disability beginning on November 5, 2016, and continuing through the date of the CCH, and we remand the issue of disability to the ALJ for further action consistent with this decision.

### **SUMMARY**

We affirm the compensable injury of (date of injury), does not extend to an L4-5 disc bulge, an L5-S1 disc bulge, lumbar radiculopathy, aggravation of degenerative disc disease, or chronic pain syndrome.

We affirm the ALJ's determination that the claimant reached MMI on February 20, 2017.

We affirm the ALJ's determination that the claimant's IR is zero percent.

We reverse the ALJ's determination that the claimant had disability beginning on November 5, 2016, and continuing through the date of the CCH, and we remand the issue of disability to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to determine whether the claimant had disability beginning on November 5, 2016, through the date of the CCH that is consistent with the evidence presented. No new evidence is to be admitted.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **AMARILLO INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DANA WEST, SUPERINTENDENT  
7200 INTERSTATE 40 WEST  
AMARILLO, TEXAS 79106.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge